



ALASKA CALIFORNIA FLORIDA MID-PACIFIC NORTHEAST NORTHERN ROCKIES  
NORTHWEST ROCKY MOUNTAIN WASHINGTON, D.C. INTERNATIONAL



**Via E-mail and USPS Mail**

November 17, 2016

Russell A. Kelly, Chief  
Permits and Services Division  
Alabama Department of Environmental Management  
1400 Coliseum Blvd.  
Montgomery, AL 36130  
Mailing Address: PO Box 301463  
Montgomery, AL 36130-1463  
Email: [rln@adem.state.al.us](mailto:rln@adem.state.al.us)

**Re: Application of Tallassee Waste Disposal Center, Inc. to Alabama Department of Environmental Management for Renewal of Solid Waste Facility Permit #62-11 for the Operation of Stone's Throw Landfill in Tallapoosa County, Alabama**

Dear Mr. Kelly,

Earthjustice<sup>1</sup> and the NAACP Legal Defense & Educational Fund, Inc. (LDF)<sup>2</sup> write on behalf of the Ashurst Bar/Smith Community Organization (ABSCO) to vigorously oppose the request by the Tallassee Waste Disposal Center Inc. (TWDC) to the Alabama Department of Environmental Management (ADEM) to renew its permit (Solid Waste Facility Permit #62-11) to operate Stone's Throw Landfill (the "Landfill"), a municipal solid waste facility in Tallapoosa County, Alabama. This letter also supplements the separate November 16 letter submitted by Rev. Ronald C. Smith, as President of ABSCO and a concerned citizen of Tallapoosa County.

<sup>1</sup> Earthjustice is America's original and largest nonprofit environmental law organization. Earthjustice leverages its expertise and commitment to fight for justice and advance the promise of a healthy world for all.

<sup>2</sup> Since its founding in 1940, LDF has been a leading advocate for racial justice in the United States using litigation, advocacy, and public education. LDF has fought tirelessly to make the promise of equal opportunity in all areas of life for Black Americans a reality, including the right to clean air, water, land, public transportation, and other human necessities, recognizing that environmental justice is requisite to a democratic and just society.

NORTHEAST 48 WALL STREET, 19<sup>TH</sup> FLOOR NEW YORK, NY 10005

T: 212.845.7376 F: 212.918.1556 NEOFFICE@EARTHJUSTICE.ORG WWW.EARTHJUSTICE.ORG

Earthjustice and LDF represent ABSCO in its civil rights complaint against ADEM with the Office of Civil Rights (OCR) at the U.S. Environmental Protection Agency (EPA). ABSCO contends that ADEM has violated (1) Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d *et seq.*, (2) EPA's implementing regulations, 40 C.F.R. § 7.35(b)-(c), and (3) EPA's 2003 recommendation to ADEM for complying with Title VI by reissuing and modifying the permit for the Landfill to operate *without* assessing whether the Landfill's operations have had and continue to have a disparate impact on Black residents in the Ashurst Bar/Smith community.<sup>3</sup> As discussed *infra*, ABSCO contends that ADEM has an independent duty to undertake an analysis of the social, economic, and health impacts of the Landfill on the Ashurst Bar/Smith community, separate and apart from the obligation of the local governing body (*i.e.*, the Tallapoosa County Commission) to do so. The complaint further alleges that the Landfill's operations have devastated the lives of the majority-Black Ashurst Bar/Smith community members, many of whom are members of ABSCO and live in closest proximity to the Landfill in Tallassee. ABSCO's complaint has been pending at OCR since 2003 and is currently under active investigation at the EPA.

The Landfill currently is permitted to receive a maximum of 1,500 tons of waste a day from *all* 67 counties in Alabama and three counties in Georgia. TWDC now seeks a renewal of its permit for the Landfill that would allow it to process an additional 1,500 tons of solid waste over five years. If ADEM renews TWDC's permit, the Landfill will inflict additional harm on these Alabama citizens.

As described in detail below, ABSCO maintains that ADEM's grant of TWDC's current application would violate civil rights laws, regulations, and guidance. Indeed, the Tallapoosa County Commission's siting of the Landfill in the Ashurst Bar/Smith community and the various permits granted to the Landfill by ADEM have had and will continue to have an adverse, disproportionate, and unjustified impact on the 98% Black population that lives in closest proximity to the Landfill.

Moreover, ADEM's continued issuance of permits to Stone's Throw and other landfills operating throughout Alabama potentially deprives ABSCO members and other Black Alabama citizens of their right to equal protection under the Fourteenth Amendment to the U.S. Constitution by constituting a pattern or practice of siting landfills in predominantly minority areas in Alabama.<sup>4</sup>

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<sup>3</sup> Letter from Karen D. Higginbotham, Dir., OCR EPA, to Luke Cole, Ctr. on Race, Poverty & the Env't & James W. Warr, Dir., ADEM at 80, EPA File No. 28R-99-R4 (July 1, 2003), ("Yerkwood Letter"), [https://www.documentcloud.org/documents/2162712-epa\\_28r-99-r4.html](https://www.documentcloud.org/documents/2162712-epa_28r-99-r4.html).

The Yerkwood Letter requires local governing bodies, like the Tallapoosa County Commission, to submit to ADEM detailed analyses of the six minimum siting factors that were considered by the local body in connection with the site-specific permit, including: "[t]he potential impact a facility in any potential location would have on public health and safety, and the potential that such locations can be utilized in a manner so as to minimize the impact on public health and safety," and "[t]he social and economic impacts that any proposed location would have on the affected community, including changes in property values and social or community perception." Ala. Code § 22-27-45 (1975).

<sup>4</sup> For example, ADEM has issued and modified permits in Lauderdale, Jefferson, St. Clair, and Walker counties to allow the operation of waste dumps in predominately Black communities. Compl. ¶ 2 (Dec. 22, 1999), [https://assets.documentcloud.org/documents/2162712/epa\\_28r-99-r4.pdf](https://assets.documentcloud.org/documents/2162712/epa_28r-99-r4.pdf). And landfills in Uniontown (in Perry County) and Dothan (in Houston, Dale and Henry counties) also are the subject of pending Title VI complaints with the OCR EPA.

As a recipient of federal funds, ADEM has civil rights enforcement obligations under Title VI. These obligations require it to consider the disproportionate and unjustified discriminatory impact of its permitting decisions on the surrounding predominately Black community in Tallassee (and other Alabama areas). In this instance, ADEM must deny TWDC's pending application for permit renewal to operate the Landfill because, to our knowledge, no state or local governing body has *ever* conducted a disproportionality assessment to analyze the social, economic, and health consequences of the Landfill on the surrounding predominately Black Ashurst Bar/Smith community in Tallassee. Had ADEM or the Tallapoosa County Commission engaged in this analysis, ADEM would likely find that the Landfill has a disparate impact on the predominantly Black Ashurst Bar/Smith community in violation of Title VI, EPA's Title VI implementing regulations, recommendations, and guidance, as we detail below.

Moreover, EPA has specifically directed ADEM to conduct and consider a disproportionality assessment in making its permitting decisions to carry out ADEM's Title VI obligations. Yet ADEM has failed to do so and, thus, cannot assess whether its permitting decisions have the effect of subjecting the surrounding community to discrimination on the basis of race. For these reasons, ADEM cannot renew TWDC's permit to operate the Landfill.

The comments below discuss some of the specific grounds for denying TWDC's permit renewal request.

**I. ADEM Must Deny TWDC's Application for Permit Renewal to Operate the Stone's Throw Landfill Because the Failure to Conduct and Consider a Disproportionate Impact Analysis Violates Title VI of the Civil Rights Act of 1964, EPA Implementing Regulations for Recipients of Its Funds, and EPA's Directive to ADEM.**

ADEM must deny TWDC's application for a permit renewal to operate the Stone's Throw Landfill because (1) Title VI prohibits discrimination by federally assisted programs like ADEM's municipal solid waste permitting program, (2) EPA's Title VI implementing regulations prohibit recipients from engaging in methods of administering EPA funds, including permitting decisions, that have a disproportionate impact on individuals based on their race, and (3) EPA has specifically directed ADEM, if the local governing has not or has not done so sufficiently, to conduct and consider a disproportionality assessment in carrying out its Title VI obligations, but ADEM and the Tallapoosa County Commission have failed to undertake this analysis.

Title VI provides that "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."<sup>5</sup> Section 602 of Title VI requires federal agencies to create implementing regulations that specify how they will determine whether recipients of federal funds are engaging in racially discriminatory practices, as well as the process by which the agencies plans to review and investigate complaints of racial discrimination.<sup>6</sup> EPA's implementing regulations prevent recipients of its funds from engaging in intentional discrimination, as well as actions and methods of administration that "have the *effect* of subjecting individuals to discrimination because of their race, color, [or] national origin . . ."<sup>7</sup>

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<sup>5</sup> 42 U.S.C. § 2000d.

<sup>6</sup> *Id.* § 2000d-1.

<sup>7</sup> 40 C.F.R. § 7.35 (b)-(c).

EPA's Title VI implementing regulations unequivocally apply to permitting decisions by recipients of its funds as set out in 40 C.F.R. § 7.35(c).<sup>8</sup> EPA generally interprets Title VI to impose an affirmative obligation on recipients of federal funds to include consideration of Title VI criteria in permitting decisions.

Courts have found that a plaintiff shows Title VI disparate impact discrimination by first demonstrating "that a facially neutral practice disparately and adversely impacts them, and that the disparate impact is causally linked to the contested practice." *S. Camden Citizens in Action v. N.J. Dep't of Env'tl. Mgmt.*, 145 F. Supp. 2d 446, 483 (D.N.J. 2001) (citing *Powell v. Ridge*, 189 F.3d 387 (3d Cir.1999), *cert. denied*, 528 U.S. 1046 (1999)); *see also N.Y.C. Env'tl. Justice All. v. Giuliani*, 214 F.3d 65, 69 (2d Cir. 2000); *Elston v. Talladega County Bd. of Ed.*, 997 F.2d 1394, 1415 (11th Cir. 1993). As EPA explained in its 2000 Interim Guidance, "[f]acially-neutral policies or practices that result in discriminatory effects violate EPA's Title VI regulations unless it is shown that they are justified and that there is no less discriminatory alternative." And while EPA may consider compliance with existing federal or state environmental law in assessing Title VI complaints, EPA also has stated that a recipient's Title VI obligations exist "*in addition to the Federal or state environmental laws governing its environmental permitting program.*"<sup>9</sup>

ADEM is a recipient of Title VI federal funds from EPA. As such, in addition to complying with federal and state environmental law, ADEM must comply with Title VI and EPA's implementing regulations because when a "recipient receives the EPA assistance, they accept the obligation to comply with EPA's Title VI implementing regulations."<sup>10</sup>

**A. ADEM Has Engaged in a Pattern of Discriminatory Permit Modification, Expansion, and Renewal Decisions *Without* A Disproportionality Assessment Being Undertaken**

In the 2003 Yerkwood Letter, EPA OCR gave ADEM recommendations on its solid waste disposal program, including the *requirement* that "local governing bodies submit to ADEM, along with their local approval of solid waste landfill permit applications, detailed analyses of the six minimum siting factors (as set out in the State's Solid Waste Disposal Act and ADEM's implementing regulations) that were considered by the local body in connection with the site-specific permit."<sup>11</sup> The Yerkwood Letter went on to suggest that "[w]here a local body's analyses of the six minimum siting factors is not sufficient (as determined by ADEM) or not done, ADEM should undertake its own consideration of these factors during its permitting of a municipal solid waste landfill;" that "ADEM should put in place a program to oversee local government implementation of local solid waste management plans; and ADEM should implement its own

<sup>8</sup> *See also S. Camden Citizens in Action v. N.J. Dep't of Env'tl. Mgmt.*, 145 F.Supp.2d 446, 476 (D.N.J. 2001).

<sup>9</sup> Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Draft Recipient Guidance) and Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits (Draft Revised Investigation Guidance), 65 Fed. Reg. 39650, 39680 (June 27, 2000) (emphasis added).

<sup>10</sup> Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Draft Recipient Guidance) and Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits (Draft Revised Investigation Guidance), 65 Fed. Reg. 39650-01, 39650 (June 27, 2000).

<sup>11</sup> *See* Compl., *supra* note 4, at ¶ 7-8.

‘recommendations’ as contained within Phase II of the State’s Solid Waste Management Plan.”<sup>12</sup> Moreover, the Alabama State Code directs ADEM to require local governing bodies, like the Tallapoosa County Commission, to consider these six minimum siting factors when identifying a potential location for solid waste management facilities in their jurisdiction.<sup>13</sup> The sixth minimum siting factor requires a local governing body and/or ADEM to consider “the social and economic impact that any proposed location would have on the affected community, including changes in property values and social or community perception.”<sup>14</sup>

In the letter, EPA OCR also cautioned ADEM that its “failure to adequately consider socioeconomic impacts (including race) at any point in the *siting and permitting* process for municipal solid waste landfills in Alabama” created a “significant potential” for failing to comply with Title VI.<sup>15</sup> Moreover, OCR found that “this potential failure of consideration could lead, in the future, to ADEM-permitted landfills that have an adverse disparate impact on a population protected by EPA’s Part 7 regulations.”<sup>16</sup>

Given this guidance, ABSCO contends when a local governing body like the Tallapoosa County Commission does not fulfill its obligation to conduct a disproportionality assessment when siting these landfills, it is incumbent upon ADEM to undertake such an analysis when it permits the landfills to operate. Yet, despite EPA’s explicit guidance and warning more than thirteen years ago, ADEM has continued to engage in a pattern of issuing, modifying, and renewing permits for landfills in Alabama, including in Tallassee, *without* either itself or the Tallapoosa County Commission having considered the disproportionate effect of these landfills on communities of color and, more specifically, the social, economic, and health impacts that the location of these landfills, including Stone’s Throw Landfill, have on the surrounding communities of color. For example, ADEM has issued and modified permits not only in Tallassee but also in Lauderdale, Jefferson, Perry, St. Clair, Tallapoosa, Walker and other counties to operate dumps in predominately Black communities, which could contribute to a pattern of Black land loss and other socioeconomic effects across the State.

Although the Tallapoosa County Commission is a local governing body that is required to submit to ADEM a detailed analysis of the six minimum siting factors considered by it, to ABSCO’s knowledge, it has *never* done so. TWDC’s current permit renewal request contains no mention of a disproportionality assessment and instead merely lists the property owners who live adjacent to the Landfill and their current relative property values. The application does not contain an assessment of the social, economic, and health impacts of the Landfill on those or any other property owners living near the Landfill or whether the property values of those living adjacent to the Landfill or community perception has changed over time.

ABSCO is unaware of any attempts by ADEM to receive a disproportionality assessment from the Tallapoosa County Commission. Nor is ABSCO aware of any such independent assessment conducted by ADEM. Absent a disproportionality assessment that sufficiently details the social, economic, and health impacts of the Landfill on the Ashurst Bar/Smith community, ADEM cannot renew TWDC’s permit. Furthermore, ABSCO is confident that if such an analysis

<sup>12</sup> Yerwood Letter, *supra* note 3, at 80-81.

<sup>13</sup> Ala. Code § 22-27-45 (1975).

<sup>14</sup> *Id.*

<sup>15</sup> Yerwood Letter, *supra* note 3, at 80.

<sup>16</sup> *Id.*

were undertaken, ADEM would find that the Tallapoosa County Commission's siting of the Stone's Throw Landfill, and ADEM's permitting of the Landfill's operations, have a disproportionate and discriminatory impact on the surrounding Black community.

**B. The Operation of the Stone's Throw Landfill Has Created a Disparate and Discriminatory Impact on the Surrounding Black Community in Tallassee in Violation of Title VI and EPA's Implementing Regulations.**

ADEM and the Tallapoosa County Commission's failure to consider the social, economic, and health impacts of the Landfill's operations *prior* to approving TWDC's application for permit renewal, given the disparate and discriminatory impact that the operation of the Landfill has on the Ashurst Bar/Smith community, constitutes a violation of Title VI and EPA's implementing regulations. Had ADEM itself conducted such an assessment or required the Tallapoosa County Commission to do so, the Landfill would most likely not have been reopened in 2002 and allowed to expand its operations in the Ashurst Bar/Smith community. Any grant of the application to renew TWDC's permit will lead to the continued disparate and discriminatory impact on the predominately Black residents in Tallassee.

ABSCO members submitted a complaint to EPA in 2003 that detailed the disparate impact that the Landfill has had on the predominately Black community in which it is currently located. That impact is ongoing. In its complaint, ABSCO cited Census Data that showed that the community directly surrounding the Landfill was 98% Black and that the Landfill provided waste services to communities that were 74% white. EPA OCR used Census Bureau data to calculate the demographics of the community within ½, 1, 2, and 3 miles of the Landfill and found that they were 90.6%, 88.2%, 57.1%, and 44.1% Black, respectively.<sup>17</sup>

At the time of the 2003 complaint, residents of the Ashurst Bar/Smith community detailed the adverse impacts of the Landfill including:

- the presence of toluene in a local drinking spring prior to the reopening of the Landfill in 2002 and the failure of the Tallapoosa County Commission to address the impact of the Landfill's expansion on future toluene levels in the drinking water;
- the Landfill borders the only local church and school in the community;
- although the Ashurst Bar/Smith community is rural and residents mostly used well water, no studies were performed to demonstrate how the water would be protected from toxic runoff from the Landfill that could contaminate the well water;
- Ashurst Bar/Smith community members could not trust their well water, and many community members were forced to switch to tap or bottled water at significant financial cost;
- surface water contamination from toxic runoff from the Landfill was having a deleterious impact on local wildlife, and thus, hunting, farmers' animals, and residents' gardens were no longer being used to produce food; and,

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<sup>17</sup> See Letter from Rafael DeLeon, Dir., EPA OCR, to Lance R. LeFleur, Dir., ADEM (Jan. 25, 2013). As of the 2010 Census: the city of Tallassee is 72.4% white and 24% Black, and Tallapoosa County is 71% white and 27% African American (2014 data).

- the Landfill was leading to the devaluation of residential property and having a negative impact on social and community perception of the Ashurst Bar/Smith community because of its proximity to the Landfill.

Earthjustice and LDF, on behalf of ABSCO, continue to document the impact of the Landfill on members of the Ashurst Bar/Smith community to EPA OCR in support of its Title VI complaint.<sup>18</sup> The following list of current adverse and unjustified impacts mirror those identified in the original EPA complaint or otherwise reflect impacts that have come to light over time:

- large amounts of garbage truck-traffic travel in and out of the community to access the Landfill, beginning in the early morning and continuing through the early evening, at fast speeds on rural, residential roads, pose safety risks to school-age children and damage the roads;
- putrid smells, emanating from the Landfill, and persistent bugs, attracted to the garbage at the Landfill, dissuade families from eating and spending time outside together, parishioners at the neighboring church from engaging in fellowship activities with one another, and households from opening their windows as part of their daily life;
- vultures and other pests that are harbingers of disease have increased and pose safety and health concerns;
- community members complain of health impacts such as cancer, respiratory problems, migraines, and dizziness, which residents have reason to believe are related to contamination from the Landfill;
- community members complain of the psychological harm of living next to a dump;
- residents no longer garden, fish from the waterways, or use well water or springs and streams because of fear of contamination; they instead buy food and water at greater costs and have changed their ways of life that had been passed down from one generation to the next; and,
- community members complain that they do not want to sell land that has been held in their families, sometimes since the late 1880s, and, even if they did, there is no buyer for this land except the Landfill; families that have sold their land to get away from the Landfill's harms have sold it to the Landfill; and community members who have chosen not to retire to the Ashurst Bar/Smith community and enjoy their family land because of all of the negative impacts stemming from the Landfill's operation.<sup>19</sup>

Had the Tallapoosa County Commission or ADEM conducted an impact analysis of both the disproportionate impact and uniquely adverse consequences that the Landfill continues to have on the predominately Black community where the Landfill is currently located, ADEM, in fulfilling its Title VI obligations, would likely not have permitted the Landfill to reopen and expand. ADEM cannot allow TWDC to renew its permit to operate the Landfill until a disproportionate impact analysis is conducted *and* ADEM finds, after fully considering the information therein, that the Landfill does not have a disparate and adverse impact on the surrounding Black community.

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<sup>18</sup> The November 16 letter from Ex. 6 Personal Privacy (PP) also shines a light on the impact of the Landfill on the Ashurst Bar/Smith community.

<sup>19</sup> See **Attachment A**, Letter from Leah Aden, Att'y, LDF, & Marianne Engelman Lado, Att'y, Earthjustice, to Betsy Biffel, Att'y, EPA OCR (Sept. 28, 2016).

### **C. TWDC Seeks Variances that Will Exacerbate the Health and Psychological Consequences of the Landfill and Have a Disparate and Discriminatory Impact on the Majority-Black Ashurst Bar/Smith Community**

In addition to the issues described above, TWDC's renewal request seeks dispensation from the bare minimum health and safety requirements of Alabama law, raising additional concerns for the health and welfare of community residents. In particular, many of the variances requested by TWDC would serve to exacerbate the health and psychological consequences of the Landfill on Black residents. Further, the variances sought by TWDC potentially violate ADEM's state law obligations, codified in ADEM's Solid Waste Program Administrative Code.<sup>20</sup>

For example, ADEM Rule 335-13-4-.12(d)(f) requires a 100-foot buffer zone around the perimeter of the landfill, and ADEM Rule 335-13-4-.22(1)(b) requires waste water to be confined to as small an area as possible, and for a landfill to use tarps, contaminated soils and petroleum, and automotive shredders residue as an alternative daily cover.<sup>21</sup> TWDC seeks variances from rules adopted by ADEM to fulfill its environmental law obligations explicated in the Alabama Solid Waste Management Plan. Thus, the permit should be rejected on this additional ground.

As members of the Ashurst Bar/Smith community have outlined in their written correspondence to EPA, some of which are described above, many of the most psychologically and physically harmful impacts of the Landfill are associated with the variances sought by TWDC. For example, the improper covering of the dump's contents is a phenomenon that serves as an eyesore to the otherwise serene, rural life in Tallassee, and has brought putrid odors, vultures, wildlife, and other pests, which are harbingers of disease, into the Ashurst Bar/Smith community. The variance described above would allow the Landfill to continue to improperly and inadequately cover the Landfill's contents.

Similarly, many residents have documented how their inability to use their well-water—because of the belief that its contaminated—and the deleterious effects of toxin-contaminated surface water has prevented them from using free, natural resources (for gardening, eating, and feeding their animals), and engaging in outdoor activities at a substantial financial and psychological cost. ADEM will aggravate this problem by allowing the Landfill to deviate from state law requirements that waste water be confined to as small of an area as possible.

ADEM's duty to deny these variances arises not only from its Title VI obligations, but also its obligations under state law. ADEM, as an executive agency of Alabama, is charged with administering state laws regulating potential environmental hazards.<sup>22</sup> The Alabama Legislature

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<sup>20</sup> See Ala. Admin. Code r. 335-13-4 (1996), <http://www.alabamaadministrativecode.state.al.us/docs/adem/335-13-4.pdf>

<sup>21</sup> See Tallassee Waste Disposal Ctr., Inc. Permit Application, No. 62-11 (June 16, 2016), <http://www.adem.state.al.us/newsEvents/notices/oct16/pdfs/10tallassee.pdf>.

<sup>22</sup> Ala. Code. § 22-22A-4(a); Ala. Code. § 41-22-3(1).

For example, ADEM administers the: (1) Alabama Water Pollution Control Act, (2) Alabama Safe Drinking Water Act of 1977, (3) Solid Wastes and Recyclable Materials Management Act, (4) Alabama Air Pollution Control Act, (5) Hazardous Wastes Management and Minimization Act, (6) Alabama Land Recycling and Economic Redevelopment Act, (7) regulatory responsibilities of the Alabama Coastal Area Management Program and (8) Alabama Environmental Management Act.



has directed ADEM to develop a State Solid Waste Management Plan.<sup>23</sup> In enacting Alabama's Solid Waste Management Plan, the Legislature intended to "to protect the public health and the state's environmental quality."<sup>24</sup> To achieve this purpose, the law provides that "[t]he terms and obligations of this article shall be liberally construed to achieve remedies intended." *Id.* The Alabama Legislature determined that the state must properly manage wastes "to reduce the likelihood of both short-term and long-term threat to human health and the environment . . ."<sup>25</sup> The Legislature also found that "[p]roper planning for solid waste management must include the evaluation of facility sites based on a broad group of factors including, but not limited to, environmental conditions, local needs for waste management, *social and economic impacts on the host community*, the availability and impact on public services, and the consistency of a proposed facility with any final solid waste management plan[.]"<sup>26</sup>

Moreover, on September 15, 2016, Alabama's Governor created the Alabama Solid Waste Management Task Force "to study and identify areas for specific revision regarding the permitting process for solid waste management facilities," having recognized that "the disposal of solid waste impacts the economic vitality and health of the citizens" of the area surrounding solid waste facilities, and the "the current process for permitting solid waste disposal does *not* provide for a comprehensive review of the broader effects of solid waste disposal on the people of the State of Alabama *before* awarding a permit."<sup>27</sup>

Accordingly, the state's Solid Waste Management Plan, particularly the breadth of its coverage, and the Governor's recognition of the need for a review of a landfill's impact *before* a permit is awarded, all counsel against ADEM renewing TWDC's permit to operate the Stone's Throw Landfill with the aforementioned variances. The variances sought by TWDC are contrary to the State's Solid Waste Management Plan and the legislative intent that guided the creation of the law. Because the variances sought by TWDC will increase the likelihood of both short and long-term socioeconomic threats to the community and the environment (particularly the air and water resources), the variances conflict with the state's mandate.

ADEM is aware that TWDC may be violating Alabama state environmental law, including the Alabama Clean Water Act, and yet, incredibly, TWDC requests variances from compliance with those laws. For example, TWDC's request for a variance from ADEM Rule 335-13-4-.22(1)(b)—requiring waste water to be confined to as small an area as possible—is potentially problematic given TWDC's *prior* notices of potential waste water violations and TWDC's Clean Water Act permit. For example, on October 29, 2007, the Landfill was issued a Notice of Violation from ADEM for "unapproved placement of special waste in the lined [Municipal Solid Waste] MSW cell at the Stone's Throw Landfill."<sup>28</sup> More recently, on July 10, 2015 an inspection of the

<sup>23</sup> Ala. Code. § 22-27-45; *see also* Ala. Code §§ 9-7-10 to 9-7-20.

<sup>24</sup> Ala. Code § 22-27-41.

<sup>25</sup> *Id.* § 22-27-40(2).

<sup>26</sup> *Id.* § 22-27-40(5) (emphasis added); *see also* Ala. Admin. Code r. 335-13-4-.01 (the landfill siting factors are designed "to prevent adverse effects on health or the environment").

<sup>27</sup> Ala. Exec. Order No. 23 (Sept. 15, 2016), <http://governor.alabama.gov/newsroom/2016/09/executive-order-number-23-2/>.

<sup>28</sup> *See Attachment B*, Letter from Heather Griffin to Registrant, TWDC (Aug. 11, 2010).

Landfill identified additional concerns about Alabama law potential violations regarding waste water management. The warning letter, prepared by a senior environmental scientist at ADEM, states that:

[1] “appropriate, effective Best Management Practices (BMPs) for the control of pollutants in stormwater run-off have not been fully implemented and regularly maintained to the maximum extent practicable resulting in the potential for uncontrolled discharges of sediment and other pollutants to a water of the state of Alabama,” [2] that “[e]ffective stabilization practices designed to dissipate stormwater runoff energy and provide for non-erosive flow velocity at stormwater discharge outlets to prevent erosion in downgradient draining features or water(s) of the State have not been fully implemented and/or maintained,” and that [3] “[s]ediment accumulation in the sediment basin or other treatment structure appears to be excessive, resulting in the potential for noncompliant discharges from reduced treatment/storage capacity.”<sup>29</sup>

Ultimately, Ashurst Bar/Smith community members have identified the putrid smells, presence of pests and vultures, and inability to trust their drinking water as particularly problematic impacts, yet TWDC seeks variances to the Landfill’s operation that not only potentially violate Alabama state law and the Alabama Solid Waste Management Plan, but also would serve to reinforce and worsen the specific adverse impacts cited by the community that violate Title VI. As such, the variances requested by TWDC underscore the imperative that ADEM deny TWDC’s permit to renew its operation of the Landfill.

### Conclusion

Based on the foregoing, Earthjustice and LDF, on behalf of ABSCO, request that ADEM **deny TWDC’s application for permit renewal to operate the Stone’s Throw Landfill** (Permit #62-11). TWDC’s permit renewal request must be denied because (1) Title VI of the Civil Rights Act of 1964 prohibits discrimination by federally assisted programs like ADEM’s municipal solid waste permitting program; (2) EPA’s Title VI implementing regulations prohibit recipients, like ADEM, from engaging in actions, including permitting decisions, that have a disproportionate and discriminatory impact on individuals based on their race; and (3) EPA has specifically directed ADEM and/or the Tallapoosa County Commission to conduct and consider a disproportionality assessment in carrying out its Title VI obligations, which ADEM and the Tallapoosa County have failed to conduct to date. Earthjustice and LDF are confident that if such a disproportionality analysis were undertaken, ADEM would find the permitting and siting of the Landfill, including the requested variances to the Landfill’s operations, have a disproportionate and discriminatory impact on the surrounding majority-Black community in violation of Title VI and state laws.

Sincerely,



<sup>29</sup> See **Attachment C**, Warning Letter from Shelane P. Bergquist, ADEM to Charlie Gray, TWDC (July 10, 2015).

Marianne Engelman Lado  
Jonathan Smith  
Earthjustice  
48 Wall Street, 19th Floor  
New York, NY 10025  
(212) 845-7393 (Marianne)



Leah C. Aden  
Kathryn C. Sadasivan  
NAACP Legal Defense & Educational Fund,  
Inc.  
40 Rector Street, 5th Floor  
New York, NY 10006  
(212) 965-7715 (Leah)

CC (via email): Betsy Biffl, EPA  
Jeryl Covington, EPA  
Lilian Dorka, Interim Director, EPA OCR  
Mary O'Lone, EPA  
Jonathan Stein, EPA  
Kurt Temple, EPA  
M. Andrew Zee, U.S. Department of Justice